

Liberty Mut. Ins. Co. v Oudkerk
2019 NY Slip Op 33674(U)
December 16, 2019
Supreme Court, New York County
Docket Number: 655647/2018
Judge: Tanya R. Kennedy
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. TANYA R. KENNEDY
Justice

PART 63

-----X

LIBERTY MUTUAL INSURANCE COMPANY,
and LIBERTY MUTUAL FIRE INSURANCE,
Plaintiffs,

INDEX NO. 655647/2018

MOTION SEQ. NO. 001

- v -

**DECISION, ORDER, AND
JUDGMENT**

VALERIE OUDKERK (Individual Defendant)
and
ANDREW J DOWD MD,
ANESTHESIOLOGY & PAIN PROFESSIONAL
PRACTICE, LLC.,
BE HEALTHY ACUPUNCTURE, P.C.,
COMMUNITY MEDICAL IMAGING P.C.,
HAAR ORTHOPAEDICS & SPORTS MEDICINE, P.C.,
MERCY MEDICAL CENTER,
MKR MEDICAL P.C.,
NEW YORK CORE CHIROPRACTIC P.C.,
NU AGE MED SOLUTIONS INC,
PROGRESSIVE EMERGENCY PHYSICIANS, PLLC,
PROTECHMED INC,
RADCITI IMAGING, P.C.,
SKY RADIOLOGY P.C.,
TECHNOLOGY TESTING OF NY, LLC
THE AVENUE PHYSICAL THERAPY &
CHIROPRACTIC CARE PLLC,
WENDY KEISER ONEIL DC PC
(Provider Defendants)

Defendants.

-----X

In this declaratory judgment action, plaintiffs LIBERTY MUTUAL INSURANCE COMPANY and LIBERTY MUTUAL FIRE INSURANCE (“Liberty Mutual”) move for an order: (A) granting plaintiffs a default judgment against non-answering defendants ANESTHESIOLOGY & PAIN PROFESSIONAL PRACTICE, LLC; COMMUNITY MEDICAL IMAGING P.C.; PROTECHMED INC; RADCITI IMAGING, P.C.; SKY RADIOLOGY P.C.; TECHNOLOGY TESTING OF NY, LLC; THE AVENUE PHYSICAL THERAPY & CHIROPRACTIC CARE PLLC and WENDY KEISER ONEIL DC PC (“non-answering defendants”); (B) declaring and permanently staying each and every part of any arbitration or court hearing brought by the non-answering defendants for No-Fault benefits stemming from the alleged occurrence of January 29, 2018; (C) declaring and granting a permanent injunction barring any arbitration or court hearing brought by the non-answering defendants for No-Fault benefits stemming from the alleged occurrence of January 29, 2018 from continuing or being commenced; (D) declaring that the plaintiffs’ denials of all claims for No-Fault by the non-answering defendants stemming from the alleged occurrence be deemed valid; and (E) for such other and just relief as this court deems just and proper. Plaintiff’s motion is unopposed.

This action arises from an alleged automobile accident occurring on January 29, 2018 involving the individual defendant VALERIE OUDKERK (“Oudkerk”). The defendant OUDKERK was allegedly operating a vehicle and made a claim under the LIBERTY MUTUAL insurance policy number AO222892880700.

The action was discontinued as to defendants PROGRESSIVE EMERGENCY PHYSICIANS, PLLC (NYSCEF Doc. No. 3), NU AGE MED SOLUTIONS INC (NYSCEF Doc. No. 4), MKR MEDICAL P.C. (NYSCEF Doc. No. 8), BE HEALTHY ACUPUNCTURE, P.C. and NEW YORK CORE CHIROPRACTIC, P.C. (NYSCEF Doc. No. 9), and MERCY MEDICAL CENTER (NYSCEF Doc. No. 12).

Defendants OUDKERK, HAAR ORTHOPAEDICS & SPORTS MEDICINE, P.C., and ANDREW J. DOWD, M.D. filed Answers to the Summons and Complaint (NYSCEF Doc. Nos. 2, 5, and 10, respectively), but did not file any opposition to Liberty Mutual’s request for declaratory relief.

LIBERTY MUTUAL has submitted proof of service on all defendants and asserts that the non-answering defendants were served with the summons and complaint, have failed to appear, plead or proceed in this action, and that the time set forth by law for the defendants to answer or appear has expired. Therefore, LIBERTY MUTUAL argues that it is entitled to a default judgment against the non-answering defendants, pursuant to CPLR 3215.

CPLR 3215 provides that “the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing” (*See Atlantic Cas. Ins. Co. v RJXJ Servs. Inc.*, 89 AD3d 649, 651, 932 N.Y.S.2d 109 [2d Dept 2011]). In this action, LIBERTY MUTUAL has submitted proof that it properly served the defendants with copies of the summons and complaint. The defaulting defendants have failed to answer or otherwise appear as required.

Accordingly, it is

ORDERED that default judgment is granted without opposition in favor of plaintiff against the non-answering defendants and it is further

ADJUDGED and DECLARED that any arbitration or court hearing brought by the defaulting defendants for No-Fault benefits claimed by defendant OUDKERK arising from the motor vehicle accident that occurred on January 29, 2018 and under the LIBERTY MUTUAL insurance policy number AO222892880700 is permanently stayed; and it is further

ADJUDGED and DECLARED that any future arbitration or court hearing brought by the defaulting defendants for No-Fault benefits claimed by defendant OUDKERK arising from the motor vehicle accident that occurred on January 29, 2018 and under the LIBERTY MUTUAL insurance policy number AO222892880700 is permanently enjoined; and it is further

ADJUDGED and DECLARED that the plaintiffs’ denial of no-fault benefits stemming from the alleged occurrence was valid.

This constitutes the Decision, Order, and Judgment of the Court.

December 16, 2019
DATE

Tanya R. Kennedy
TANYA R. KENNEDY, J.S.C.
HON. TANYA R. KENNEDY

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: